

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JESSIE RODGERS (#72203)

PLAINTIFF

v.

No. 4:06CV165-P-A

CHRISTOPHER EPPS, ET AL.

DEFENDANTS

MEMORANDUM OPINION

This matter comes before the court on the *pro se* prisoner complaint of Jessie Rodgers, who challenges the conditions of his confinement under 42 U.S.C. § 1983. For the purposes of the Prison Litigation Reform Act, the court notes that the plaintiff was incarcerated when he filed this suit. For the reasons set forth below, the instant case shall be dismissed.

Discussion

The court, *sua sponte*, takes up the dismissal of the plaintiff's case filed under 42 U.S.C. § 1983. The plaintiff, a prisoner proceeding *pro se*, seeks review of his sentence imposed under the laws of Mississippi. The plaintiff alleges that the computation of his various sentences has included a mistake in that at least one sentence has been computed as consecutive, when it should have been computed as concurrent. As such, the plaintiff argues that he should be compensated at the rate of \$1,500.00 per day for each day of illegal confinement. He does not challenge the conditions of his confinement, as required under 42 U.S.C. § 1983; he instead challenges the fact and duration of his confinement, a claim which he should have brought as a *habeas corpus* claim under 28 U.S.C. § 2254. A claim under 42 U.S.C. § 1983 does not accrue until the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994).

As the plaintiff has not shown that his conviction or sentence has been reversed, expunged, invalidated or impugned by the grant of a writ of *habeas corpus*, his claim under 42 U.S.C. § 1983 is not ripe for consideration and shall be dismissed without prejudice to his ability to file a *habeas corpus* claim under 28 U.S.C. § 2254.¹ A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 7th day of March, 2007.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE

¹The plaintiff Jesse Rodgers (# 72203) filed a petition for a writ of *habeas corpus* in this court on December 19, 2002, *Rogers v. Mississippi Department of Corrections Chief Records Officer*, 4:02CV319-M-B. That petition was dismissed as untimely filed September 22, 2003. Although the name was spelled differently in the earlier suit (“Jesse Rogers” rather than “Jessie Rodgers”), the inmate numbers are the same in both cases. As such, the court finds that the cases were initiated by the same inmate.